REMARKS

Claims 1-27 remain pending in the instant application. Entry of this amendment and consideration of the pending claims are respectfully requested.

Election

Applicants hereby provisionally elect "species 2" comprising claims 19-27 with traverse and reserve the right to petition this restriction requirement. The Restriction Requirement cites claims 1-18 as claiming a species 1 illustrated in FIG. 11 and cites claims 19-27 as claiming a species 2 illustrated in FIG. 2.

Amendment

To advance prosecution, Applicants hereby cancel claims 28-38 without prejudice.

Restriction Requirement

The Examiner has required a restriction of the claims between a Species 1 (claims 1-18) allegedly associated with FIG. 11 and a Species 2 allegedly associated with FIG. 2. Applicants traverse the selection of figures 2 and 11 as illustrating distinct species. Figures 2 and 11 do not illustrate multiple distinct species.

> **Claims restricted to different species <u>must be</u> mutually exclusive**. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations **disclosed only for the second species and not the first**. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

M.P.E.P. § 806.04(f) (emphasis added). This section provides the general test of when claims should be restricted as different species. This test requires that "one claim recites limitations which under the disclosure are found in a first species **but not** in a second...." FIG. 2 illustrates the general operation of a photonic burst-switched network, while FIG. 11 illustrates the operation of an edge node in a photonic burst-switched network to implement secure data transmissions. Accordingly, FIGs. 2 and 11

do not illustrate mutually exclusive elements; rather, these FIG. 2 illustrates a process that is **implemented** <u>**in connection with**</u> (not exclusive of) the process illustrated in FIG. 11.

Applicants further note that there is "a serious burden on the examiner if restriction is required." M.P.E.P. § 803. "If the search and examination of an entire application can be made without serious burden, the examiner **must** examine it on the merits, even though it includes claims to independent or distinct inventions." M.P.E.P. § 803 (emphasis added).

Accordingly, Applicants kindly request that the restriction between claim 1-18 and 19-27 be withdrawn.

Retention of Claims to Non-elected Invention

"Where the requirement for restriction in an application is predicated upon the nonallowability of generic or other type of linking claims, application is entitled to retain in the case claims to the nonelected invention or inventions." M.P.E.P. § 809.04. "If a linking claim is allowed, the examiner ... must examine the claims to the nonelected inventions that are linked to the elected invention by such allowed linking claim." M.P.E.P. § 809.04.

The Restriction Requirement identified claims 1 and 19 as generic. Accordingly, Applicants retain claim 1-18.

Favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.
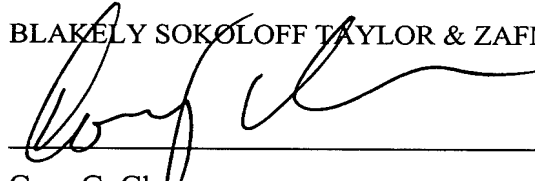
CHARGE DEPOSIT ACCOUNT

Please charge our Deposit Account No. 02-2666 for any additional fee(s) that may be due in this matter, and please credit the same deposit account for any overpayment.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: _Aug. 3, 2007_

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